

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

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|--------------------|---|---------------------------|
| RANDY TETER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 16-4271-CV-C-NKL |
| |) | |
| SCHOFIELD, et al., |) | |
| |) | |
| Defendants. |) | |

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION
SEEKING PHYSICAL EXAMINATION FROM A
COURT-APPOINTED EXPERT**

Defendants Amr Heikal, Blake Lamberson, and Paul Schofield (collectively "Defendants"), through counsel, state in opposition the following to "Plaintiff's motion seeking physical examination from a court-appointed expert." E.C.F. Doc. 19:

Although a district court, pursuant to Rule 35, may order a party to submit to a physical examination that is only upon request by the opposing party. Rule 35 does not vest the Court with authority to appoint an expert to examine a party on his own motion. *Foster v. Lombardi*, 2013 WL 3820718, at *1 (E.D. Mo., 2013) (citing *Callegari v. Lee*, 2011 WL 175927, at *7 (N.D.Cal. Jan.19, 2011) (citing *Smith v. Carroll*, 602 F.Supp. 2d 521, 526 (D.Del.2009)). See also *Jenkins v. Doe*, 2011 WL 121682, at *1 (D.Conn.2011) (Rule 35 does not authorize a party to file a motion for his own physical examination.);

Baker v. Hatch, 2010 WL 3212859 at *3 (E.D.Cal. Aug.12, 2010) (finding no authority under Rule 35(a) to grant pro se prisoner plaintiff's request for medical examination); *Green v. Branson*, 108 F.3d 1296, 1304 (10th Cir. 1997) (court denied plaintiff's request for his own physical examination)).

Further, Plaintiff is provided with medical care from a third-party, Corizon, L.L.C, which is contracted with the Missouri Department of Corrections ("MDOC") to provide medical care to inmates incarcerated within MDOC. Therefore, Plaintiff has access to the relief, a physical examination, he seeks.

For the reasons provided above, Defendants' oppose Plaintiff's Rule 35 motion as wholly improper and respectfully request this court deny such motion.

Respectfully submitted,

JOSHUA D. HAWLEY
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**ATTORNEYS FOR
DEFENDANTS**

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2017, I electronically filed the foregoing with the Clerk of the Court's ECF system and further certify that the above and foregoing document was served via U.S. first class mail, postage prepaid, to the following:

Randy Teter
#1028240
Potosi Correctional Center
11593 State Highway O
Mineral Point Missouri 63660

/s/ Kayla Kemp
Kayla Kemp
Assistant Attorney General